

SECTION H
SPECIAL CONTRACT REQUIREMENTS

H-1. KEY PERSONNEL

H-1.1. The contractor shall maintain and provide to the TMA COR the resumes of key personnel (as defined by the contractor) to this contract. Any key personnel replacement shall be at least as well qualified as the individual originally holding the position vacated and the contractor must receive Government approval to change such key personnel. The contractor shall ensure that its staff and subcontractors (if any) are thoroughly trained and knowledgeable regarding the program and the requirements of this contract. Any new key personnel must have prior approval of the Contracting Officer before they begin work. The contractor shall, within 3 working days, notify the CO and COR, in writing, of key staff who resigns or otherwise is not longer associated with the contract.

H-1.2. The resumes must contain the individuals' name, mailing address, phone number, e-mail address, education, and experience.

H-2. DISSEMINATION OF INFORMATION

There shall be no dissemination or publication, except within and between the contractor, subcontractors, and the TRICARE Management Activity (TMA) of information developed under this contract or contained in the reports to be furnished pursuant to this contract without prior written approval from the Contracting Officer.

H-3. LIQUIDATED DAMAGES - PHASE-OUT

H-3.1. It is agreed by the parties that in the event the contractor fails to meet any one of the Phase-Out performance requirements set forth herein, damage shall be sustained by the Government. The extent or amount of such damage would be difficult or impossible to prove, therefore it is agreed that the Contractor shall be required to pay the Government, or the Government shall reduce the payment of the contract fixed price as follows:

H-3.1.1. Detailed Phase-Out Plan. If the Contractor fails to meet the requirements of this subtask, liquidated damages in the amount of \$960 per day will be assessed until such time this subtask is completed. Liquidated damages for this subtask will be limited to no more than \$15,000.

H-3.1.2. Weekly claims audit/phase-out activities report. If the Contractor fails to meet the requirements of this subtask, liquidated damages in the amount of \$480 per day will be assessed for each day a weekly report is late. The maximum amount of liquidated damages that can be assessed for this subtask is \$15,000.

H-3.1.4. Final Processing. If the Contractor fails to perform the requirements of this subtask, liquidated damages in the amount of \$62.00 per audit claim will be assessed for each audit claim not completed (through the TRICARE review and issuance of the final report) within 120 calendar days following the last day of the contract period of performance. The maximum amount of liquidated damages that can be assessed for this subtask is an amount equal to 10% of the total number of audit claim reviews ordered by the Government for the final contract period of performance.

H-3.1.5. Nothing in this section shall deprive TMA of any other remedies available under law for defective or untimely performance of any requirement under this contract, including but not limited to nonexercise of contract options, or partial or total termination for default.

H-4. FREEDOM OF INFORMATION ACT (FOIA)

The contractor shall provide assistance to TMA in resolving and pursuing FOIA requests involving the contractor's proposal submitted under the solicitation

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for this contract or FOIA issues relative to the contract. The contractor shall provide representatives at the times and places as directed by the Contracting Officer to complete actions under FOIA. If a FOIA requires contractor involvement, a separate delivery order under the Contracting Officer directed travel CLIN will be issued for that effort.

H-5. CENTRALIZED LOCATION OFFICE

The contractor shall perform all services related to this contract at a centralized location.

H-6. CONFIDENTIALITY

H-6.1. All beneficiary records, including Beneficiary History and Deductible Files as described in the MCSC Operations Manual, Chapter 1, Section 5 and the TRICARE Operations Manual, and any other claims data used in any way by the contractor must be protected as required by the Freedom of Information Act, the Privacy Act of 1974 (as implemented by Department of Defense Regulation 5400.11-R), the Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act, the Health Insurance and Portability Act (HIPAA) of 1996, and 10. U.S.C. 1102. With regard to confidentiality, the contractor shall comply with the TRICARE Operations Manual, Chapter 1, Section 5 and the TRICARE Operations Manual. Records must be protected, in terms of privacy and security during use, transmission, storage, destruction, and handling. The contractor agrees to all provisions of the Business Associate Addendum (Section J, Attachment J-12). Unless otherwise provided herein as approved by the Contracting Officer, all records shall be used only in the performance of the contract.

H-6.2 Under the Privacy Act, it takes a court order for TMA records to be released. A subpoena for TMA records is not sufficient for release. The contractor shall forward all subpoenas for documents that encompass any TMA records to the COR for coordination of release with the TMA, Office of General Counsel (OGC). The COR shall coordinate release or nonrelease with the TMA/OGC and notify the contractor in writing the determination of the TMA/OGC. The contractor shall not release any TMA records without approval of the TMA/OGC.

H-7. CONTRACTING OFFICER DIRECTED TRAVEL

The Contracting Officer may direct the contractor, in writing, to travel to Government offices or other sites to participate in meetings or other related activities, in performance of this Contract. Travel expenses for such travel must be in accordance with the Joint Travel Regulations (JTR) and will be reimbursed by the Government under the Contracting Officer Directed Travel CLINs. The contractor shall immediately notify the Contracting Officer in writing if it's determined that the cumulative costs for such directed travel will exceed \$10,000 for any contract period. The Government shall not be liable for such costs that are in excess of \$10,000 for any contract period unless the contractor obtains prior written approval from the Contracting Officer to exceed this amount. This clause does not apply to contractor travel that is specifically required by the Contract or travel made at the option of the Contractor.

H-8. INTEGRATED PROCESS TEAMS

The Government may develop major contract and program changes through Integrated Process Teams (IPTs). This clause describes the contractor's participation in this process. The contractor shall provide the appropriate personnel (as agreed to by the Contracting Officer and the contractor) to serve on IPTs to develop and/or improve the technical, business, and implementation approach to any and all proposed TRICARE program contract changes within 14 calendar days after notification by the Contracting Officer. The contractor will participate in the entire process with the Government team from concept development through incorporating the change into the contract. This process includes developing

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budgetary cost estimates, requirement determination, developing rough order of magnitude cost estimates, preparing specifications/statements of work, and establishing a mutually agreeable equitable adjustment to the contract price as a result of incorporating the change (including pricing, negotiations, etc). IPTs will not be formed for all contract changes, but generally will be formed for complex, system-wide issues. The Contractor shall participate in all required meetings as determined by the Government team leader, regardless of how they are held (in person, via teleconference, by video-teleconference, or through electronic conferences within the TMA web site). The frequency and scheduling will vary depending on the topic.

H-9. CONFLICT OF INTEREST

H-9.1. Reference: Federal Acquisition Regulation (FAR) Subpart 9.5, "Organizational and Consultant Conflicts of Interest."

H-9.2. Services required by the Government under this contract include tasks which result in the contractor, its personnel and subcontractors, to review health care claims processed under TRICARE contracts or to have access to procurement sensitive information as defined by Title 41 United States Code, Section 423. Such tasks may include, but are not limited to, personal and substantial involvement in the support of subsequent competitive acquisitions by appropriated funded contracts for services.

H-9.3. In order to avoid any organizational conflict of interest, or the appearance thereof, the contractor or any of its subcontractors shall not be a current TRICARE contractor [managed care, TRICARE Dual-Eligible Fiscal Intermediary Contract (TDEFIC), [TRICARE Mail Order Pharmacy \(TMOP\)](#) and [TRICARE Retail Pharmacy \(TRRx\)](#)] or first or second tier subcontractor to such contracts. The contractor shall not offer in response to any other TRICARE solicitation [for managed care, TDEFIC, [TMOP](#), [TRRx](#)], nor shall it be eligible for award of any other such TRICARE contract, nor serve as a consultant or subcontractor to another TRICARE contractor [managed care, TDEFIC, [TMOP](#), [TRRx](#)].

H-9.4. The restriction in Section H-9.3. above shall remain in effect for a period of 6 months from the date of final acceptance of all work under this Contract and shall apply as well to any subsidiary, affiliate, joint venture, merged party, successor or assignee of the offeror. This restriction shall not apply to any subsequent procurement for services of the type required by this Contract.

H-10. TECHNICAL DATA

The data contained in all reports shall be owned by the Government.

H-11. SPECIAL PROVISION - PRIVACY OF PROTECTED HEALTH INFORMATION

H-11.1. *Definitions.* As used in this Provision:

- *Individual* has the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- *Privacy Rule* means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- *Protected Health Information* has the same meaning as the term "protected health information" in 45 CFR 164.501, limited to the information created or received by the contractor from or on behalf of The Government.
- *Required by Law* has the same meaning as the term "required by law" in 45 CFR 164.501.
- *Secretary* means the Secretary of the Department of Health and Human Services or his/her designee.

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- Terms used, but not otherwise defined, in this Provision shall have the same meaning as those terms in 45 CFR 160.103 and 164.501.

H-11.2. The contractor agrees to not use or further disclose Protected Health Information other than as permitted or required by the Contract or as Required by Law.

H-11.3. The contractor agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Contract.

H-11.4. The contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to the contractor of a use or disclosure of Protected Health Information by the contractor in violation of the requirements of this Contract.

H-11.5. The contractor agrees to report to the Government any use or disclosure of the Protected Health Information not provided for by this Contract.

H-11.6. The contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by the contractor on behalf of the Government agrees to the same restrictions and conditions that apply through this Contract to the contractor with respect to such information.

H-11.7. The contractor agrees to provide access, at the request of the Government, and in the time and manner designated by the Government to Protected Health Information in a Designated Record Set, to the Government or, as directed by the Government, to an Individual in order to meet the requirements under 45 CFR 164.524.

H-11.8. The contractor agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Government directs or agrees to pursuant to 45 CFR 164.526 at the request of the Government or an Individual, and in the time and manner designated by the Government.

H-11.9. The contractor agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by the contractor on behalf of, the Government, available to the Government, or at the request of the Government to the Secretary, in a time and manner designated by the Government or the Secretary, for purposes of the Secretary determining the Government's compliance with the Privacy Rule.

H-11.10. The contractor agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for the Government to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

H-11.11. The contractor agrees to provide to the Government or an Individual, in time and manner designated by the Government, information collected in accordance with this Provision of the Contract, to permit the Government to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

H-11.12. General Use and Disclosure Provisions

H-11.12.1. Except as otherwise limited in this Provision, the contractor may use or disclose Protected Health Information on behalf of, or to provide services to, the Government for the following purposes, if such use or disclosure of Protected Health Information would not violate the Privacy Rule or the Department of Defense Health Information Privacy Regulation if done by the Government: For all purposes necessary for performance of this contract.

H-11.13. Specific Use and Disclosure Provisions

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H-11.13.1. Except as otherwise limited in this Provision, the contractor may use Protected Health Information for the proper management and administration of the contractor or to carry out the legal responsibilities of the contractor.

H-11.13.2. Except as otherwise limited in this Provision, the contractor may disclose Protected Health Information for the proper management and administration of the contractor, provided that disclosures are required by law, or the contractor obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the contractor of any instances of which it is aware in which the confidentiality of the information has been breached.

H-11.13.3. Except as otherwise limited in this Provision, the contractor may use Protected Health Information to provide Data Aggregation services to the Government as permitted by 45 CFR 164.504(e) (2) (i) (B).

H-11.13.4. The contractor may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j) (1).

H-11.14. Obligations of the Government

H-11.14.1. Provisions for the Government to Inform the contractor of Privacy Practices and Restrictions

H-11.14.1.1. Upon request the Government shall provide the contractor with the notice of privacy practices that the Government produces in accordance with 45 CFR 164.520, as well as any changes to such notice.

H-11.14.1.2. The Government shall provide the contractor with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect the contractor's permitted or required uses and disclosures.

H-11.14.1.3. The Government shall notify the contractor of any restriction to the use or disclosure of Protected Health Information that the Government has agreed to in accordance with 45 CFR 164.522.

H-11.15. Permissible Requests by the Government

H-11.15.1. The Government shall not request the contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the Government, except for providing Data Aggregation services to the Government and for management and administrative activities of the contractor as otherwise permitted by this Provision.

H-11.16. Termination. A breach by the contractor of this Provision, may subject the contractor to termination under any applicable default or termination provision of this Contract.

H-11.16.1. If this contract has records management requirements, the records subject to the Provision should be handled in accordance with the records management requirements. If this contract does not have records management requirements, the records should be handled in accordance with H-11.16.2. and H-11.16.3. below.

H-11.16.2. If this contract does not have records management requirements, except as provided in H-11.16.3. of this section, upon termination of this Contract, for any reason, the contractor shall return or destroy all Protected Health Information received from the Government, or created or received by the contractor on behalf of the Government. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of the contractor. The contractor shall retain no copies of the Protected Health Information.

H-11.16.3. If this contract does not have records management provisions and the contractor determines that returning or destroying the Protected Health

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Information is infeasible, the contractor shall provide to the Government notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Government and the contractor that return or destruction of Protected Health Information is infeasible, the contractor shall extend the protections of this Contract to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as the contractor maintains such Protected Health Information.

H-11.17. Miscellaneous

H-11.17.1. Regulatory References. A reference in this Provision to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.

H-11.17.2. Survival. The respective rights and obligations of Business Associate under the Termination terms at H-11.16. of this Provision shall survive the termination of this Contract.

H-11.17.3. Interpretation. Any ambiguity in this Provision shall be resolved in favor of a meaning that permits the Government to comply with the Privacy Rule.

H-12. SPECIAL PROVISION - SECURITY OF PROTECTED HEALTH INFORMATION

H-12.1. *Definitions.* As used in this Provision:

- *Electronic Protected Health Information* has the same meaning as the term "electronic protected health information" in 45 CFR 160.103.
- *Secretary* means the Secretary of the Department of Health and Human Services or his/her designee.
- *Security Rule* means the Security Standards for the Protection of Electronic Protected health Information at 45 CFR part 160 and part 164, subpart C.
- Terms used, but not otherwise defined, in this Provision shall have the same meaning as those terms in 45 CFR 160.103, 164.103, and 164.304.

H-12.2. The contractor agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Government.

H-12.3. The contractor agrees to report to the Government any security incident of which it becomes aware.

H-12.4. The contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Government, agrees to the same restrictions and conditions that apply through this Contract to the contractor with respect to such information.

H-12.5. The contractor agrees to make internal practices, books, and records relating to the security of Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Government, available to the Government, or at the request of the Government to the Secretary, in a time and manner designated by the Government or the Secretary, for purposes of the Secretary determining the Government's compliance with the Security Rule.

H-12.6. Termination. A breach by the contractor of this Provision, may subject the contractor to termination under any applicable default or termination provision of this Contract.

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H-12.7. Miscellaneous

H-12.7.1. Regulatory References. A reference in this provision to a section in the Security Rule means the section as in effect or as amended, and for which compliance is required.

H-12.7.2. Interpretation. Any ambiguity in this Provision shall be resolved in favor of a meaning that permits the Government to comply with the Security Rule.

H-13. ORDERING

All orders shall be authorized by issuance of a delivery order to the contract by the Contracting Officer.